IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1612 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AJITBHAI D MAHADEVIA

Versus

UNION OF INDIA

Appearance:

MR DIPAK R DAVE for Petitioner

MS PJ DAVAWALA, Additional Central Government Standing Counsel for the respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 23/03/2001

ORAL JUDGEMENT

Rule. Ms. Dawawala, learned Additional Counsel for the Central Government waives service of notice of Rule on behalf of the respondents.

2. Heard the learned counsel for the parties. This petition has been filed for a direction to the respondents to continue National Savings Scheme no. 127412 of the petitioner opened on 11.1.1989 with interest as per NSS scheme and for quashing the letters dated 26.12.2000, 27.3.2000, 17.1.2001 and 20.2.2001 sent by the respondents to the petitioner.

3. The petitioner opened NSS account no. 127412 in Navrangpura post office, Ahmedabad and that account was opened by Darshan Hiralal Desai having power of attorney of the petitioner for doing all works including to open NSS account on behalf of the petitioner. The petitioner has not withdrawn any amount from that account. The power of attorney holder of the petitioner was asked to deposit the passbook and on inquiry it was informed to him that the account which was opened earlier was irregular since on the basis of general power of attorney, the account could not have been opened. The petitioner received letter dated 26th December, 2000 from the office of the Chief Post Master General, Ahmedabad to the effect that after due consultation with the Ministry of Finance, the request of the petitioner has been turned down to continue the NSS account of the petitioner. The petitioner thereafter made several representation including by his letter dated 20th February, 2001. The proposal was considered by the DTE in consultation with the Ministry of Finance, but that has been rejected.

4. The learned counsel for the petitioner contended that after a period of 11 years, the respondents cannot now say that the account was opened by a person not authorised under law. For that purpose, it cannot be said that the special power of attorney was required to open that account. The learned counsel for the petitioner also relied on the decision of this court dated 3.5.2000 in the case of Prashant K Patel vs. Union of India in Special Civil Application no. 3422 of 2000 wherein this Court (Coram: Hon'ble Mr. Justice M.R.Calla, J) has held that the respondent was estopped by the principles of promissory and equitable estoppel under section 115 of the Indian Evidence Act from now denying the fruits of the earned interest in the account to the petitioner so as to close the account without interest. Such an approach on the part of the Government machinery under the State cannot be encouraged and in such cases no authority is supposed to take such a hyper technical view of the matter. The petitioner's right in this respect deserves the protection of this court and he cannot be deprived of his property rights by the

respondents through an attempt like that of catching mercury by fork. The fact of the matter is that the account was opened under the NSS, the amount was deposited and the petitioner was to earn interest on this amount which was deposited in the said account. The amount has remained with the respondent for all these years and the petitioner cannot be deprived of earning interest from such account and the impugned action on the part of the respondents was found to be wholly arbitrary, unreasonable and irrational within the meaning of Article 14 of the Constitution. Accordingly, the impugned action of the respondents was quashed. The contents of the communication dated 3rd March, 2000 followed by yet another communication dated 21st March, 2000 were declared to be illegal.

5. The learned counsel for the petitioner stated that a copy of the judgment dated 3rd March, 2000 rendered in Special Civil Application no. 3422 of 2000 was produced before the authority concerned and the authority has distinguished only on the fact that in the case of Special Civil Application no. 3422 of 2000, there is a decision of the High Court of Gujarat while in the present case, the request of the petitioner has been rejected by the Ministry of Finance, DEA, New Delhi and there is a vast difference between thecase of Prashant K Patel and the present case.

6. I have carefully considered the facts and circumstances of the present.R

be denied the earned interest on the account which has already been credited in the passbook. The respondents are barred by principles of promissory and equitable estoppel after 11 years. Such a plea regarding irregularity of the attorney cannot be entertained. In the facts and circumstances of the case, the petition deserves to be allowed and is accordingly allowed. The communication in respect of the decision vide orders dated 26.12.2000, 27.3.2000, 20.2.2001 and 17.1.2001 are hereby quashed and set aside. The respondents are directed to continue the petitioner's account no. 127412 of the petitioner which was opened on 11.1.89 with interest as per NSS. Rule is made absolute accordingly with no order as to costs.

...

***darji